IN THE SUPREME COURT OF FLORIDA

EUGENE H. STEELE,

Appellant,

Case No. SC01-2793

v.

TFB File No. 2002-50,050(17E)

THE FLORIDA BAR,

Appellee.

_____/

THE FLORIDA BAR'S AMENDED ANSWER BRIEF

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PRELIMINARY STATEMENT

In order to ensure a clear record, the following terms of reference will be utilized by The Florida Bar:

The Florida Bar, appellee, will be referred to by its full name or “the bar”;

Eugene H. Steele, respondent/appellant as "respondent" or “Steele”; and complainant Hal Richman, D.D.S., as “the complainant” or “Dr. Richman.”

There will be no references to the transcript of the final hearing since none was filed by respondent.

References to the Report of Referee will be made by the symbol "RR ___" referring to the Report of Referee followed by the page number.

THE FLORIDA BAR'S COUNTER STATEMENT OF THE CASE AND FACTS

As respondent's statement of the case and facts omit many of the salient facts, the bar is compelled to supplement same as follows:

A. STATEMENT OF THE CASE

The Florida Bar's formal complaint in this cause was filed on December 17, 2001. By order of the Chief Judge of the Fifteenth Judicial Circuit dated January 15, 2002, the Honorable Donald W. Hafele was appointed to preside as referee. Following the denial of the bar's motion for partial summary judgment, the final hearing came on to be heard by the undersigned on May 7, 2002. The hearing was held at the Broward County Courthouse, Fort Lauderdale, Florida, in accommodation of respondent's prior request that the venue of same be in Broward County.

During the course of these proceedings, respondent appeared pro se and The Florida Bar was represented by Joel M. Klaits, Esq., Bar Counsel.

It is of significant note to this appeal that the referee specifically found [RR 2 & 3]:

> The respondent participated in preliminary hearing matters but, surprisingly, failed to appear

> at the final hearing. The respondent instead had a "Letter Memorandum" hand-delivered to the undersigned minutes before the commencement of the May 7, 2002 final hearing.

The aforesaid letter memorandum, dated May 3, 2002, was admitted into evidence and attached to the Report of Referee as Exhibit "A".

The referee recommended that respondent be found guilty of violating Rules 4-4.4 and 4-8.4(d) of the Rules Regulating The Florida Bar. [RR 4]. It was a further recommendation that, as and for an appropriate sanction, respondent receive a public reprimand.

In making his recommendation, the referee found it pertinent to make specific note of respondent's failure to appear at the final hearing, charitably characterizing the excuse provided by respondent for his recalcitrance as "quite unusual." [RR 7].

B. STATEMENT OF THE FACTS

The referee found that the following facts were established by clear and convincing evidence at the final hearing based upon the testimony of the complainant to the bar, Dr. Richman:

The respondent is, and at all times material to this action was, a member of The Florida Bar subject to the

jurisdiction and disciplinary rules of The Supreme Court of Florida. [RR 2]. During the course of his law practice, on or about July 5, 2001, respondent disseminated derogatory and demeaning correspondence by mail on behalf of his client, one John Early, to one Dr. Richman, a practicing dentist and complainant to the bar. The letter was admitted into evidence as the bar's Exhibit 1 and attached to the Report of Referee as Exhibit "B". [RR 2]. The aforesaid correspondence, which was drafted in a disparaging manner, threatened to, among other things, publicly humiliate Dr. Richman's reputation by publicizing respondent's uncorroborated accusations through the media. [RR 2]. The letter to Dr. Richman was drafted and disseminated in an effort to influence the outcome of a dispute between respondent's client, Mr. Early, and Dr. Richman, by misstating the statutory deadline within which to comply with Florida statute 772.11, Civil Theft, which is thirty (30) days and not five (5) days as respondent represented in his letter. [RR 3].

By virtue of the aforesaid conduct, respondent knew, or should have known, that he disparaged, humiliated and intimidated, or attempted to intimidate an unrepresented potential litigant. [RR 3]. The referee characterized as "compelling" Dr. Richman's uncontroverted testimony regarding his feeling of humiliation and his belief that he was treated in a callous and threatening manner by the respondent. [RR 3]. Dr. Richman testified that the letter "intimidated" and "threatened" him causing him to feel "bullied." [RR 3]. He further stated that it was beyond his belief

that an attorney would send such a letter. [RR 3].

The referee emphasized in his report that Dr. Richman's testimony showed that prior to his receipt of the letter, there had been no indication whatsoever that any funds were claimed to be due to respondent's client nor that any monies were being held for dental work that had not been performed. [RR 3]. Further, the letter did not so much as set forth a definitive sum alleged to have been due to respondent's client. [RR 3-4]. This testimony was unrebutted at the final hearing by virtue of respondent's election not to appear. [RR 4].

SUMMARY OF ARGUMENT

Respondent, in his initial brief, has not presented even a scintilla of a basis in either law or fact that would support the reversal of the referee's findings either as to the rule violations for which he found respondent guilty, nor as to his recommended sanction of a public reprimand. The bar considers the misconduct for which the referee found respondent guilty to be that which cannot be properly condoned as zealous representation. If permitted to occur, it can, and often does, exacerbate a dispute into one which greatly exaggerates the conflict at the core of a matter into one that takes on a life of its own. In this litigious era, it is incumbent upon the court to circumvent such behavior before court dockets become glutted by matters that might have been otherwise resolved but for the type of misconduct exhibited by respondent.

ARGUMENT I

THE UNCONTROVERTED EVIDENCE IN THE RECORD CLEARLY AND CONVINCINGLY SUPPORTS THE REFEREE'S RECOMMENDATION THAT RESPONDENT HAS VIOLATED RULES 4-4.4 AND 4-8.4(d) OF THE RULES REGULATING THE FLORIDA BAR AND THAT A PUBLIC REPRIMAND IS AN APPROPRIATE SANCTION.

The bar submits that the contents of respondent's letter to Dr. Richman [the bar's Exhibit 1] violate Rules 4-4.4 and 4-8.4(d) pursuant to the standards set forth by this Court in The Florida Bar v. Martocci, 791 So.2d 1074 (Fla. 2001), wherein respondent's conduct consisted of, inter alia: (1) making insulting facial gestures to opposing counsel and her client; (2) calling opposing counsel a "bush leaguer"; (3) telling her that depositions are not conducted under "girl's rules"; and (4) continually disparaging her knowledge and ability to practice law.

The Court held that such conduct was prejudicial to the administration of justice by exacerbating relationships between respondent and his adversaries. The Court found that Martocci's comments were disrespectful and abusive, crossing the line from that of zealous advocacy to unethical conduct. This Court, in issuing its opinion, emphatically emphasized:

> It is our hope that by publishing this opinion and thereby making public the offending and

> demeaning exchanges between these particular attorneys, that the entire bar will benefit and realize an attorney's obligation to adhere to the highest professional standards of conduct no matter the location or circumstances in which an attorney's services are being rendered.

This Court's opinion in Martocci cited several other cases in support of its ruling that demeaning, disparaging and threatening conduct constitutes a violation of Rule 4-8.4(d). In The Florida Bar v. Wasserman, 675 So.2d 103 (Fla. 1996), an attorney was disciplined for swearing at a judicial assistant over the telephone after receiving an unfavorable response to a question posed to the judge presiding over the case. In The Florida Bar v. Uhrig, 666 So.2d 887 (Fla. 1996), the respondent was found in violation of Rule 4-8.4(d) [prejudicial to the administration of justice] by mailing an insulting letter to the opposing party who was a member of a minority group.

In The Florida Bar v. Buckle, 771 So.2d 1131, 1133 (Fla. 2000), this Court stated:

> A lawyer's obligation of zealous representation should not and cannot be transformed into a vehicle intent upon harassment and intimidation.

Respondent argues that his characterization of Dr. Richman as a thief, a typification for which there is no corroborating evidence in this or any other record, is justification for his uncontroverted misconduct. By futilely seeking to distinguish the nature of his misconduct from that of Martocci, Wasserman, Uhrig and Buckle, he has buttressed the

bar's contention that he has clearly and convincingly demonstrated his lack of comprehension of the meaning of "intimidation," "threaten" and "bully."

Respondent, in attempting to support his disingenuous position, presents argument regarding a letter purported to be from his client which is not in evidence or otherwise a part of the record. Respondent's brief contains numerous attempts to present evidence to this Court which he failed, for unknown reasons, to present at or before the final hearing for consideration by the referee. His first point is replete with these attempts, including an incident which he claims to have transpired at an ethics seminar, and which in any event has no probative value of the issues properly before this Court for review.

Respondent, in his second point on appeal, attempts to argue that a civil suit filed against Dr. Richman on behalf of his client subsequent to the filing of the bar complaint was just cause to stay this disciplinary proceeding. This argument is ludicrous, having no basis in the Rules Regulating The Florida Bar nor in any other applicable statute or rule of court.

With regard to respondent's point 3, Rule 3-3.4(c) regarding grievance committee membership and the grounds and procedure for recusal of a member, provides in pertinent part:

> No member of a grievance committee shall perform any grievance committee function when that member:
>
> (1) is related by blood or marriage to the complainant or respondent;
>
> (2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;
>
> (3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or
>
> (4) is prejudiced or biased toward either the complainant or the respondent.
>
> **Upon notice of the above prohibitions** [emphasis added] the affected members should recuse themselves from further proceedings. The grievance committee chair shall have the power to disqualify any member from any proceeding in which any of the above prohibitions exist and are stated of record or in writing in the file by the chair.

The referee properly denied respondent's prior motion to stay and remand the case to an alternate grievance committee. Respondent failed to demonstrate that he suffered any harm or bias that would have justified the relief sought. Further, the Rules Regulating The Florida Bar neither authorize nor provide for the relief sought by respondent in his motion. Respondent failed to present any grounds for the recusal of any grievance committee members as same are prescribed by the aforesaid rule.

With regard to respondent's point four, the bar had a copy of the proposed Report of Referee available for hand-delivery to him at the final hearing on May 7, 2002, which he elected not to attend. The draft of the proposed report submitted to the Court at that time was substantially altered by the referee when he issued his report on May 31, 2002, fully three (3) weeks subsequent to the final hearing. Respondent had ample time to submit a proposed report of referee well in advance of that date.

Respondent's argument in point five that John Early, who appeared at the final hearing despite respondent's election not to appear, should have been permitted to testify notwithstanding his recalcitrance, is without legal basis or precedent. The bar finds it difficult to present an argument in opposition to this disingenuous suggestion.

In his sixth point on appeal, respondent again offers an issue for review which was uncontroverted at the final hearing. Due to respondent's decision to offer no evidence to the contrary, the referee's specific finding that the letter to Dr. Richman misstated the thirty (30) statutory window for compliance prescribed by Section 772.11, Florida Statutes, entitled Civil Theft, was unequivocally supported by clear and convincing evidence. [RR 3]. The letter demanding payment was admitted into evidence as the bar's Exhibit 1 and attached to the Report of Referee as Exhibit "B". In it, respondent distinctly threatens Dr. Richman by stating that "if the check is not received in 5 days, I will file

suit against you for civil theft, which carries triple damages and attorney's fees." As such, the letter, which speaks for itself, is clearly a misstatement of Section 772.11, Florida Statutes. Further, the record is entirely devoid of any evidence to the contrary.

CONCLUSION

For the reasons stated herein, The Florida Bar respectfully submits that this Court should deny the relief sought by respondent and find him guilty of violating R. Regulating Fla. Bar 4-4.4 [In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person....] and Rule 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis...]. Accordingly, the bar respectfully submits that a public reprimand is an appropriate sanction under the circumstances of this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Amended Answer Brief have been furnished by regular U.S. Mail to Respondent, Eugene H. Steele, Esq., 1061 West Oakland Park Boulevard, Suite 101, Fort Lauderdale, Florida 33311, and to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 2399-2300, on this 16th day of December, 2002.

_____

JOEL M. KLAITS

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that The Florida Bar's Amended Answer Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses by Norton AntiVirus for Windows.

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JOEL M. KLAITS